

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

ΕN

GOVERNING COUNCIL 97th session Rome, 2-4 May 2018 UNIDROIT 2018 C.D. (97) 4 Original: English February 2018

Item No. 5 on the agenda: International Interests in Mobile Equipment

(a) Implementation and status of the Luxembourg Rail Protocol and of the Space Protocol

(prepared by the Secretariat)

Summary Update on the implementation and status of the Rail and Space

Protocols to the Cape Town Convention

Action to be taken The Governing Council is invited to take note of the progress

Mandate Work Programmes 2014-2016 and 2017-2019

Priority High

and UNIDROIT 2018 - C.D. (97) 2

- 1. The Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Rail Protocol) was opened to signature in Luxembourg on 23 February 2007 and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets (the Space Protocol) was opened to signature in Berlin on 9 March 2012. Neither of them is yet in force.
- 2. UNIDROIT is designated as the Depositary to both instruments. Under the Work Programme 2017-2019, the implementation of both Protocols was given the highest degree of priority (cf. UNIDROIT 2016 A.G.(75) 8, para. 44). The present memorandum provides an update on the Institute's Depositary functions under them and additional details on UNIDROIT's activities regarding their promotion and implementation.

I. STATUS

- 3. UNIDROIT has been designated as the Depositary of the Luxembourg **Rail Protocol** (pursuant to its Article XXXIV(1)). The Rail Protocol will enter into force following the procedure provided for in Article XXIII.
- 4. As of 28 February 2018, the Luxembourg Rail Protocol was signed by seven States (France, Germany, Italy, Mozambique, Sweden, Switzerland and the United Kingdom) and ratified by two States (Luxembourg and Gabon) and one contracting Regional Economic Integration Organisation (the European Union). For the details see Annexe I.
- 5. UNIDROIT has been designated as the Depositary of the **Space Protocol** (pursuant to its Article XLVIII(1)). The Space Protocol will enter into force following the procedure provided for in Article XXXVIII. As of 28 February 2018, it has four Signatory States (Burkina Faso, Germany, Saudi Arabia and Zimbabwe). For the details, Annexe II).

II. ACTIVITIES

GENERAL

6. UNIDROIT'S responsibilities as **Depositary** under the Luxembourg Rail Protocol and the Space Protocol are specified in each instrument, and include the operation of a system for the receipt and notification of all instruments of ratification, declarations and other documents lodged with the Depositary.

RECENT ACTIVITIES OF THE DEPOSITARY IN RELATION TO THE LUXEMBOURG RAIL PROTOCOL

7. After the 96th session of the Governing Council (10-12 May 2017), His Excellency Mr Robert Rydberg, Ambassador Extraordinary and Plenipotentiary of the Kingdom of Sweden in Italy signed the Luxembourg Rail Protocol on 27 June 2017.

ACTIVITIES OF THE RATIFICATION TASK FORCE OF THE RAIL PROTOCOL AND OTHER EVENTS

- 8. The **Ratification Task Force**, established by the Rail Preparatory Commission and composed of the Co-Chairs of the Preparatory Commission, of Luxembourg, of representatives of the Rail Working Group, of Regulis SA as designated Registrar and of SITA, as well as of OTIF and UNIDROIT, met several times (mostly through teleconference) and organised several events also during 2017 and the first months of 2018.
- 9. In particular, the Ratification Task Force met in Rome on 27 September 2017 to discuss the progress of ratification in key countries. The meeting was honoured by the presence of H.E. Paul Dühr, Ambassador of Luxembourg to Italy. Prof. Anna Veneziano, Secretary-General *a.i.* of UNIDROIT, and Mr Peter Bloch, co-chair of the Preparatory Commission and Ratification Task Force, opened the meeting, in which Mr Howard Rosen (Chairman, Rail Working Group), Ms Elizabeth Hirst (Managing Director, Regulis SA), and Mr Andy Smith (SITA), were present. The Secretary-General of the Intergovernmental Organisation for International Carriage by Rail (OTIF), Mr François Davenne, and the Head of Finance and Administration of OTIF, Mr Gousébasha Gaffar, and Rail Working Group Secretary Mr Martin Fleetwood, participated via remote connection.
- 10. As to seminars and presentations relating to the Luxembourg Rail Protocol, on 28 March 2017, UNIDROIT Secretary–General, Mr José Angelo Estrella Faria, was invited to participate in a Symposium in Beijing, organised by the Treaty & Law Department of the Ministry of Commerce of the People's Republic of China (MOFCOM) and hosted by the University of International Business

and Economics (UIBE). It was addressed to industry stakeholders and government officials and aimed to provide an understanding of the benefits of the Rail Protocol, its overall impact, the functioning of the Registry, as well as an assessment based on the Aircraft Protocol. The Symposium was opened by Mr. YE Jun (Deputy Director General, Treaty & Law Dept, MOFCOM), and Professor SHI Jingxia (Dean UIBE Law School), Mr LIU Keyi (Deputy Director, Domestic Trade Law Divisions, Treaty & Law Dept, MOFCOM) and featured presentations by the Secretary-General on the Rail Protocol and by Ms Elizabeth Hirst (Managing Director, Regulis SA -Registrar Designate of the International Registry under the Rail Protocol) on the functioning of the International Rail Registry. As an outcome of the Symposium the constitution of an Academic Study Group chaired by Prof. Gao from the Renmin University was announced.

- 11. On 26 October 2017, a Seminar was hosted by the Swedish Law Firm Hamilton in Stockholm, focussing on the key economic and strategic advantages of the Luxembourg Rail Protocol to the Cape Town Convention for the Swedish Rail Industry. The event, which saw the participation of members of the local rail industry and relevant stakeholders, opened with words of welcome from Unidroit President Prof. Alberto Mazzoni, an introduction by Mr PG Ekbom (Partner, Hamilton Advokatbyrå and Joint Chair of the Nordic Contact Group of the RWG), followed by a presentation on the Cape Town Convention and its Protocols provided by UNIDROIT Secretary-General a.i., Prof. Anna Veneziano, and an Overview and Current Status of the Rail Protocol presented by Mr Howard Rosen (Chairman of the Rail Working Group). The Seminar went on to illustrate the practical benefits of the Rail Protocol, with presentations of Mr Rosen and Mr Björn Westerberg (CEO of the Swedish Train Operators' Association), the Operation of the International Registry (provided by Ms Elizabeth Hirst, Registrar-designate, Regulis SA), the changes the Protocol would bring about in the matters of Creditor repossession on default and insolvency (by Professor Göran Millqvist of the Stockholm Center for Commercial Law), and the Ratification process in Sweden (Ms Louise Petrelius, Legal Adviser of the Division for IP and Transport Law in the Swedish Ministry of Justice).
- 12. On 22 November 2017, the Faculty of Law of Eötvös Lóránd University organised a Conference on the Cape Town Convention and its Protocols in Budapest, with the support of the Ministry of Justice of Hungary and participation of UNIDROIT. The conference, on "Recent developments in the law of security interests: the Cape Town Convention, its Protocols and national laws", included also a discussion on the Luxembourg Rail Protocol. For more information see the Annual Report 2017, C.D.(97) 2.
- 13. On 21 February 2018 a study commissioned by the Rail Working Group and carried out by Oxera was issued, with the aim of assessing the direct microeconomic benefits deriving from the Luxembourg Rail Protocol. The study shows that the Rail Protocol will save €19.4bn for a group of 20 countries in Europe. See a copy of this Report attached under Annexe III.

SPACE PREPARATORY COMMISSION

- 14. Pursuant to Resolution 1 of the diplomatic Conference for the adoption of a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets adopted on 9 March 2012, a **Preparatory Commission** was set up to act as Provisional Supervisory Authority for the establishment of the International Registry for Space Assets. The following States agreed to serve as members of the Preparatory Commission: Brazil, the People's Republic of China, the Czech Republic, France, Germany, India, Italy, the Russian Federation, Saudi Arabia, South Africa and the United States of America. The International Telecommunication Union (ITU) as well as representatives of the financial and commercial world were invited as observers.
- 15. The Fifth Session of the Preparatory Commission was held at the seat of UNIDROIT in Rome on 6 December 2017, under the Chairmanship of the former Chairman of the Commission of the Whole at the Berlin Conference Professor Sergio Marchisio. The Commission convened to discuss

the progress in, the appointment of a Supervisory Authority and the selection of the Registrar as well as a series of future promotional events for 2018. The Report of the Session is available at the following link: https://www.unidroit.org/english/documents/2017/depositary/ctc-sp/pcs-05-02-e.pdf.

16. Following the discussions held during the meeting of the Preparatory Commission, its members agreed to constitute a Sub-Group to reassess industry participation for the promotion and development of the Space Protocol. The primary purpose of this sub-group will be to reach out to members of the industry and ascertain whether they are willing to lend their support towards the Space Protocol and, if so, invite them to participate in a relaunched Space Working Group.

EVENTS RELATING TO THE SPACE PROTOCOL

- 17. On 2 February 2017, the Secretary-General delivered a Technical Presentation entitled "Towards the Establishment of the International Registry of Secured Interests in Space Objects: The Space Protocol to the Cape Town Convention and Rail Protocol", during the 54th session of the Scientific and Technical Subcommittee of the Committee on the Peaceful Uses of Outer Space (Vienna, 30 January 10 February 2017.
- 18. On 7 December 2017, UNIDROIT hosted a panel presentation on the challenges and opportunities of financing the space industry, featuring a keynote presentation of Tanja Masson-Zwaan (Professor, International Institute of air and space law at Leiden University). The presentation was introduced by Prof. Sergio Marchisio (Chairman of the Space Preparatory Commission), and was followed by a panel discussion including Francesco Amicucci (General Counsel, Thales Alenia Space), Oliver Heinrich (Partner, BHO Legal), Souichirou Kozuka (Professor, Gakushuin University) and Bernhard Schmidt-Tedd (Head of Legal and Business Support, DLR).
- 19. In the context of the promotion activities regarding the Space Protocol planned for 2018, UNIDROIT will participate *inter alia* in a meeting of The Hague International Space Resources Governance Working Group in Leiden and in a session on space financing at the International Astronautical Congress to be held in Bremen in October 2018.

CAPE TOWN CONVENTION ACADEMIC PROJECT

- 20. The Cape Town Convention Academic Project, a joint endeavour of the University of Oxford, Faculty of Law, and the University of Washington, School of Law (as well as under the auspices of UNIDROIT for the repository and the journal), held its 6th Annual Conference in Oxford on 12 and 13 September 2017, with the active participation of academics, practicing lawyers and governmental experts. Topics addressed in the presentations included an update on the preparation of the draft Protocol on mining, agriculture and construction equipment (MAC Protocol), with particular regard to MAC Protocol and treaty design, an examination of the mechanism to update identification criteria, a comparative analysis of CTC accession rules for all protocols and the treatment of fixtures and land liens in the draft MAC Protocol; the power to dispose under the CTC: background, content and implications; Novation and assignments under the CTC; Injunctions and (declared) non-judicial remedies with a dispute resolution case study; A comparison of the position of buyers under the three Protocols; rules versus standards under CTC, and the relationship to gap filling and national law. For more information see http://www.ctcap.org/.
- 21. The next CTCAP Conference is scheduled for September 2018 in Oxford.

ACTION TO BE TAKEN

22. The Uniderial Secretariat would invite the Governing Council to take note of the developments in relation to the implementation of the Rail and the Space Protocols.

ANNEXE I

LUXEMBOURG PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

PROTOCOLE DE LUXEMBOURG PORTANT SUR LES QUESTIONS SPÉCIFIQUES AU MATÉRIEL ROULANT FERROVIAIRE À LA CONVENTION RELATIVE AUX GARANTIES INTERNATIONALES PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES

as of 28 February 2018 / au 28 février 2018

Adoption: Place / Lieu: Luxembourg

Date: 23-02-2007

Entry into force: No / Non

Entrée en vigueur: Conditions: 4 ratifications (Art. XXIII(1))

Contracting States / Etats contractants

Depositary / Dépositaire: UNIDROIT

STATE / ETAT	SIGNATURE	RATIFICATION / ACCESS. / ADHES.	ENTRY INTO FORCE / ENTREE EN VIGUEUR	DECL. Or RESERV. / DECL. OU RESERVES
France	03-03-17	-	_	_
Gabon	23-02-07	04-04-17	_	_
Germany / Allemagne	21-11-12	-	_	_
Italy / Italie	23-02-07	-	_	_
Luxembourg	23-02-07	31-01-12	_	_
Mozambique	15-11-16	-	_	_
Sweden / Suède	27-06-17	-	_	-
Switzerland / Suisse	23-02-07	_	_	_
United Kingdom / Royaume-Uni	26-02-16	-	-	-
European Union / ¹ Union européenne	10-12-09	18-12-14	-	D

Regional Economic Integration Organisation / Organisation régionale d'intégration économique: Protocol(e) Article XXII

ANNEXE II

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

PROTOCOLE PORTANT SUR LES QUESTIONS SPÉCIFIQUES AUX BIENS SPATIAUX À LA CONVENTION **RELATIVE AUX GARANTIES INTERNATIONALES** PORTANT SUR DES MATÉRIELS D'ÉQUIPEMENT MOBILES

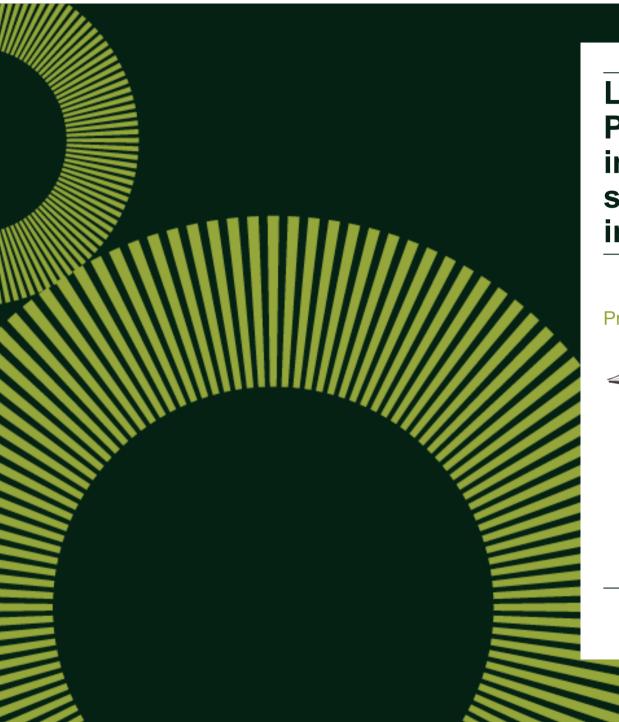
as of 28 February 2018 / au 28 février 2018

Place: Berlin / *Lieu*: Berlin Date: 09.03.2012 Adoption:

Entry into force / Entrée en vigueur: Not in force / Pas encore en vigueur (ex Article XXXVIII)

Depositary / Dépositaire: Unidroit

STATE / ETAT	SIGNATURE	RATIFICATION (RT) ACCEPTANCE / ACCEPTATION (AC) APPROVAL / APPROBATION (AP) ACCESSION / ADHESION (AS)	DECLARATIONS	ENTRY INTO FORCE / ENTREE EN VIGUEUR
Burkina Faso	09.03.2012	-	-	-
Germany / Allemagne (with declaration at signature / avec déclaration à la signature)	21.11.2012	-	-	-
Saudi Arabia / Arabie saoudite	09.03.2012	-	-	-
Zimbabwe	09.03.2012	_	_	_



Luxembourg Rail Protocol: estimated impact on rolling stock financing cost in Europe

Prepared for





Objectives

- 1 Develop a solid evidence base with 20 countries across Europe
- Develop a robust assessment of economic benefits, based on the evidence
- Help RWG, UNIDROIT and their members to consider the country and market impact of the Protocol
- Help governments consider the effect of the Protocol before its adoption
- Complement the legal analysis supporting implementation / adoption of the Protocol



Summary

Direct
micro-benefits
from 20 countries
assessed at

€19.4bn

Many additional micro and macro benefits expected in addition



Context

- Global market volume of the rail industry of €159bn per annum, including €54bn in rolling stock
- Total market for rail supply is set to continue its growth of recent years at 2.6% per year
- Growth in the rail market is currently constrained by the availability of funding
- 4 Luxembourg Rail Protocol improves availability of funds



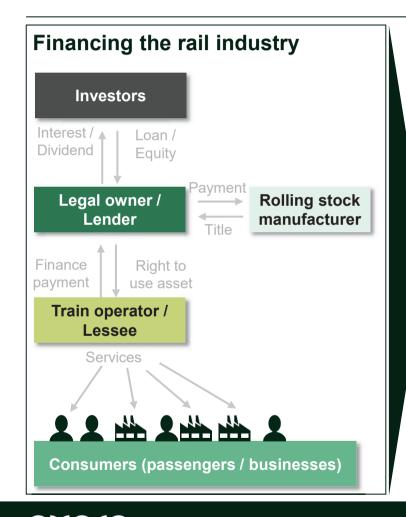
Contents

- 1 Benefits from the Luxembourg Rail Protocol
- Assessing direct financing cost reductions: methodology
- 3 Country case studies



Benefits from the Luxembourg Rail Protocol (LRP)

The Luxembourg Rail Protocol (LRP)



Issue with bringing in private capital due to:

- uncertainty around the repossession of collateral for creditors
- · limited legal infrastructure and tracking of assets
- cross border risks, no international registry
- no common system for identifying railway equipment worldwide

Solution: Luxembourg Rail Protocol

New global legal systems for the recognition and prioritisation of security interests held by creditors

Debtors covered



all debtors in ratifying state

Vehicles covered



all vehicles running on tracks or above, on, or under a guideway

Financing covered



Features of LRP deliver both micro- and macro- benefits

Single central global registry

- Facilitates local recording, international interests and universal numbering system
- Establishes clear priority among creditors
- Provides for **real time monitoring** creditors can check rival claims to related rail equipment
- · Eliminates unnecessary restructuring of security interests as transactions change

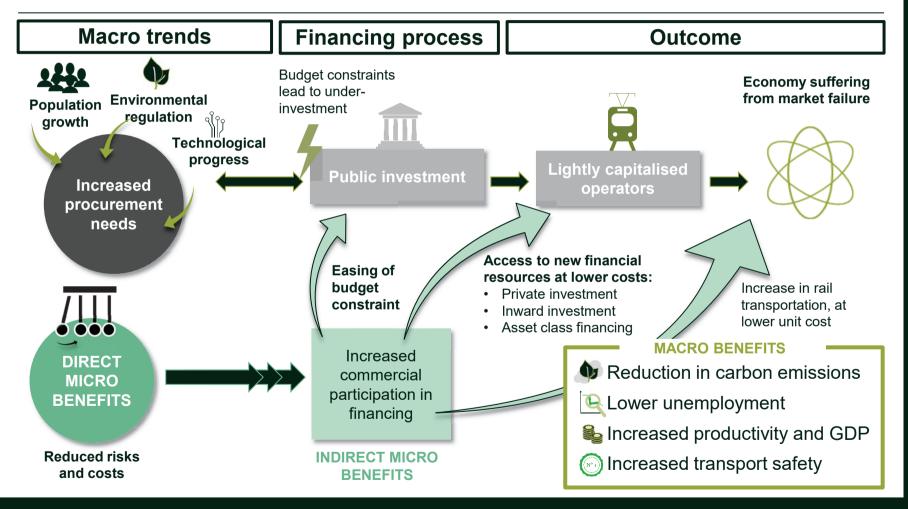
Clear legal framework and enforcement

- Covers contracting states and all debtors therein without differentiating across the type of financing structures
- Provides for clear creditor rights on termination, default, and insolvency
- Recognises and regulates the **security interests** of financiers and other parties
- Opens the way to secured finance with recourse only to the assets



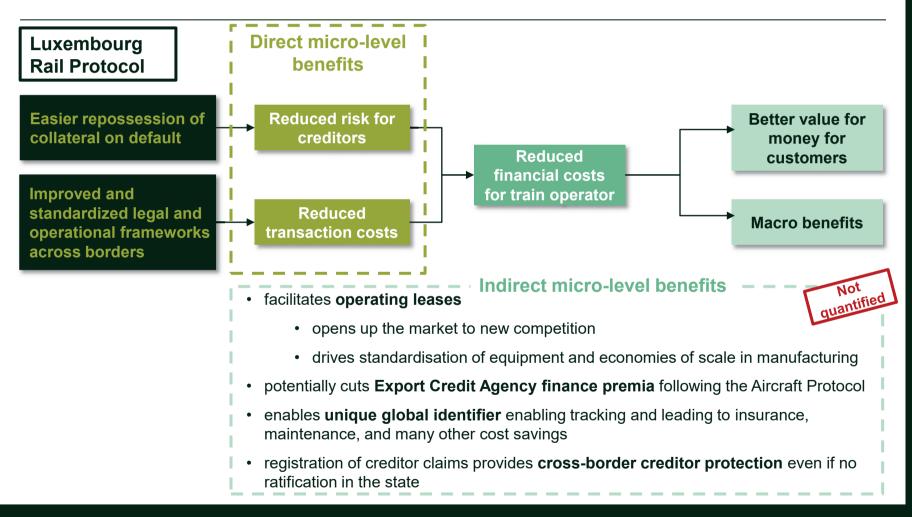


LRP will reduce costs and help growth in rail transport





This study focuses on the direct micro-level benefits

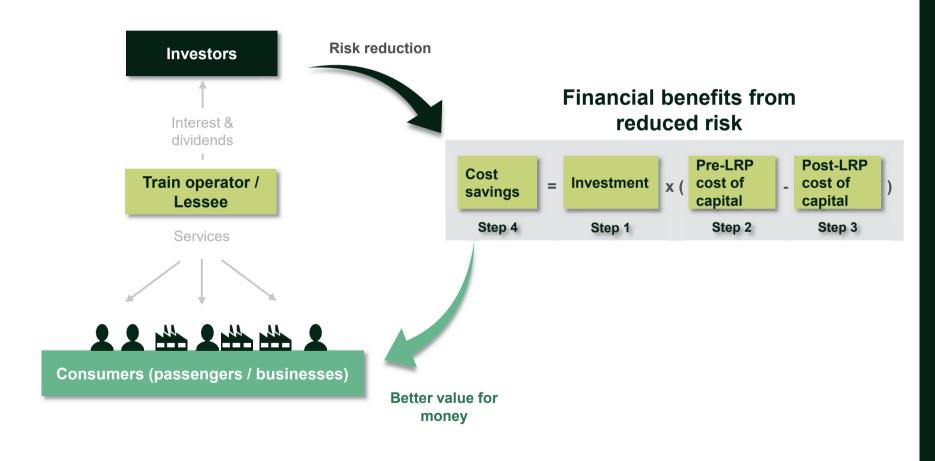




Assessing direct financing cost reductions: methodology



Methodological approach





Step 1: Investment to finance

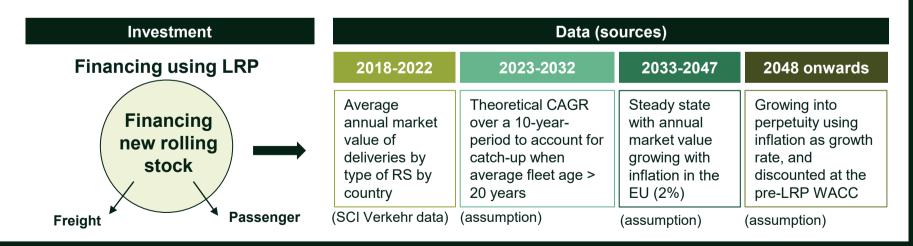


Key assumptions

- **Investment:** assume that both the financing of new rolling stock and the refinancing of the current fleet are affected by the ratification of the LRP. Refinancing occurs when the age of a RS unit reaches 10 years or 20 years.
- **Source of financing:** assume that (i) only private financing benefits from the LRP; (ii) the share of public financing will decrease by half by 2023 due to the catalyst effect of the LRP and then remain constant from 2023 onwards.
- Periods: forecast from 2018 to 2047 terminal value calculated at 2047.

2018-2022: forecasts of new deliveries are assumed to offset retirements based on assumed asset life of 30 years.

<u>2023-2032:</u> model a catch-up period of higher deliveries for countries where average age of fleet exceeds 20 years, i.e. where the LRP will unlock new finance and deliveries to replace aging fleet.





Investment to finance

Pre-LRP cost of capital

Post-LRP cost of capital

Financial benefits

Catch-up through reducing average age of fleet Rational and methodology

Assets older than 40 years assumed to be gradually retired

Average fleet age therefore gradually reduces to 20 years

Countries with younger fleets

Countries with older fleets

Luxembourg Rail Protocol

Increase in access to private financing for all operators

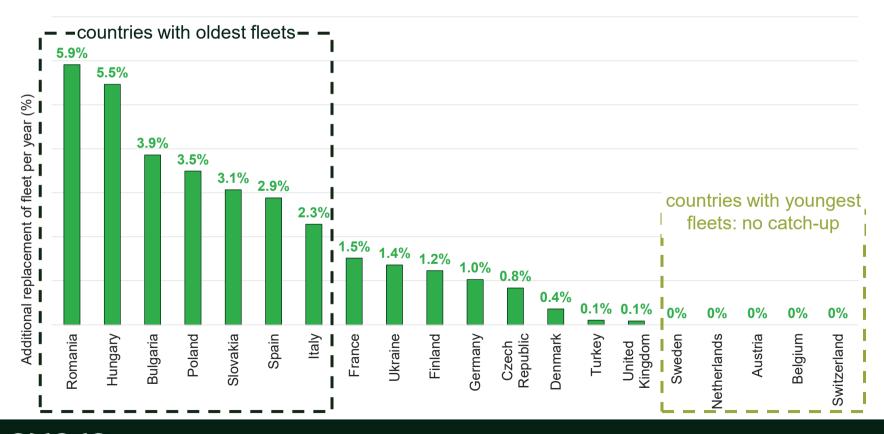
Higher rate of investment in new fleet over a catch-up period of 10 years until the average fleet age is 20 years



Catch-up through reducing average age of fleet

Catch-up effect

Average fleet age assumed to be reduced to 20 years (i.e. based on 40 years asset life) over 10 years, which drives additional fleet replacement



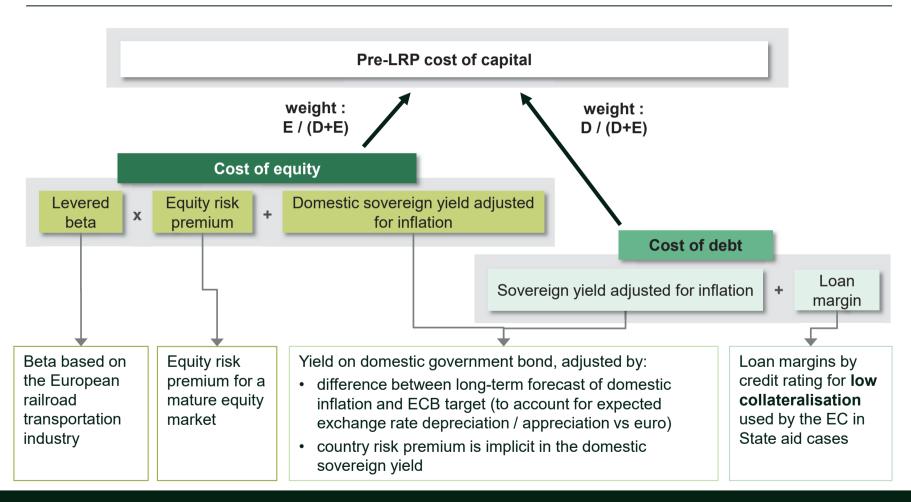


Post-LRP cost of capital

Financial benefits

Step 2: pre-LRP cost of capital

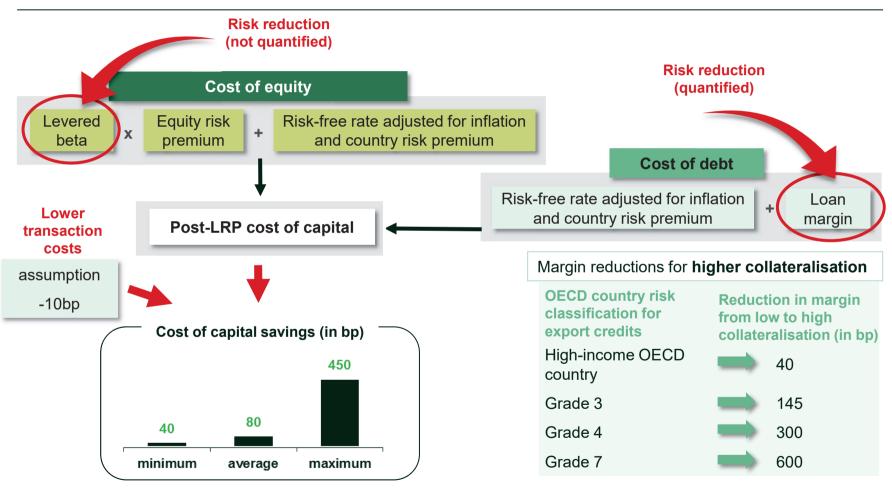






Step 3: post-LRP cost of capital





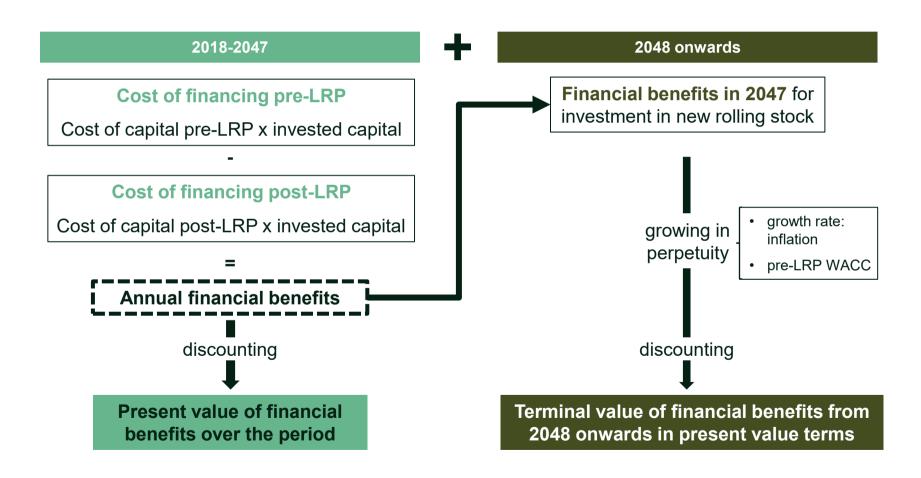


Post-LRP cost of capital

Financial benefits

Step 4: Financial benefits







Country case studies

oxera compelling economics

FINANCIAL BENEFITS

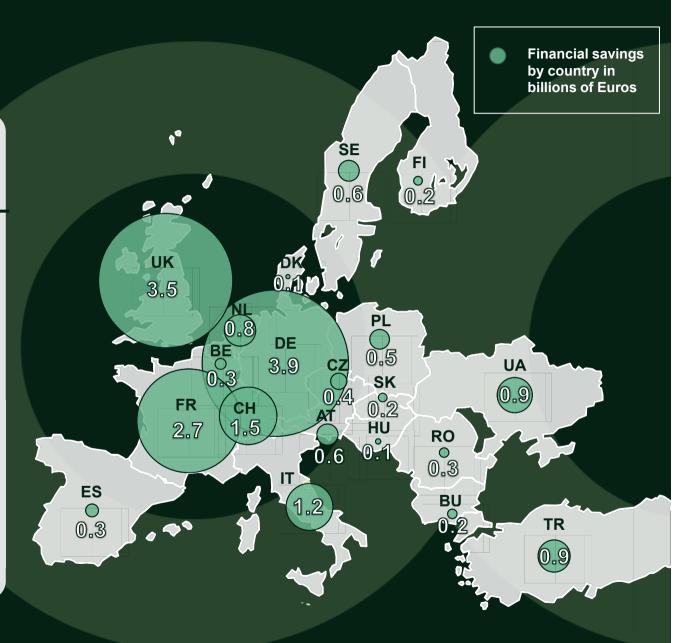
20 countries

€19.4bn total benefits

Refinancing 16%

84%

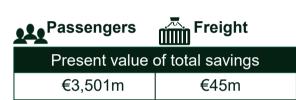
Freight 12% New deliveries Passengers 88%



Country case studies 1/5

Present value of total savings €3,546m €54 per Å





Present value of total savings
€336m
€7 per 🏌





Present value of total savings
€2,738m
€41 per Å





Present value of total savings €1,243m €21 per 1







Country case studies 2/5

Present value of total savings €289m

€289m €25 per **†**





Present value of total savings
€3,866m
€47 per †





Present value of total savings
€833m
€49 per Å



Passengers	Freight	
Present value of total savings		
€812m	€21m	

Present value of total savings
€1,518 m
€181 per Î



Passengers	Freight	
Present value of total savings		
€1,324m	€194m	

Country case studies 3/5

Present value of total savings
€429m
€41 per †





Present value of total savings
€231 m
€43 per †





Present value of total savings
€561m
€64 per Å



Passengers	Freight	
Present value of total savings		
€463m	€98m	

Present value of total savings
€135 m
€14 per Å



Passengers	Freight	
Present value of total savings		
€128m	€7m	

Country case studies 4/5

Present value of total savings
€517m
€14 per †





Present value of total savings
€113m
€20 per ↑











Present value of total savings
€230m
€42 per Å



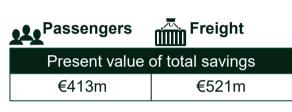
Passengers	Freight	
Present value of total savings		
€188m	€42m	



Country case studies 5/5

Present value of total savings
€934m
€21 per †





Present value of total savings
€853m
€11 per ↑





Present value of total savings
€251m
€13 per \$\div{\text{t}}\$



Passengers	Freight	
Present value of total savings		
€223m	€28m	

Present value of total savings
€247m
€35 per Å



Passengers	Freight		
Present value of total savings			
€223m	€23m		



